

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

MAIL STOP AF

Theodore R. Zeigler

Application No. 10/779,641

Group Art Unit: 3609

Filed: February 18, 2004

Examiner: Bartosik, Anthony N.

For: EXPANDABLE AND COLLAPSIBLE Confirmation No. 9084
STRUCTURES INCLUDING SPLIT
SCISSOR ASSEMBLY

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the final Official Action dated November 16, 2007, the applicant requests a Pre-Appeal Brief Request for Review. A Notice of Appeal is filed as a separate paper with the present Request.

Claims 1-10, 15, and 25 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,274,980 to *Zeigler* (*Zeigler* '980). Claims 11-14 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Zeigler* '980 in view of U.S. Patent Application Publication No. 2002/0189659 to *Carter*. Claims 16 and 18-24 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Zeigler* '980 in view of U.S. Patent No. 6,141,934 to *Zeigler*.

All of the claims recite language similar to that shown underlined in claim 1, below:

1. An expandable and collapsible scissor assembly for an expandable and collapsible structure, comprising:
 - a first strut having a first end and a second end;
 - a second strut upper portion having a first end and a second end, the first end of

the second strut upper portion being pivotably connected to the first strut at an upper strut connection point; and

a second strut lower portion having a first end and a second end, the second end of the second strut lower portion being pivotably connected to the first strut at a lower strut connection point,

wherein the lower strut connection point is between the upper strut connection point and the first end of the first strut and the scissor assembly is movable between a folded position and an expanded position, wherein, when the scissor assembly is in the folded position, the first end of the first strut and the second end of the second strut upper portion are substantially adjacent and the second end of the first strut and the first end of the second strut lower portion are substantially adjacent.

It is asserted at Page 16 of the final Official Action that the structures in the '980 patent alleged to correspond to the second end of the first strut (bottom end of strut 232 in FIG. 3C) and the first end of the second strut lower portion (connection point of strut 228¹ to strut 220) are "substantially adjacent".

It is respectfully submitted that this is an unreasonable position. As can be seen from the marked-up copy of FIGS. 3C and 7D of the '980 patent attached as an Appendix,² when the scissor assembly is in the folded position (FIG. 3C):

- the second end of the second strut upper portion is substantially adjacent the *second* end of the first strut at an *opposite end* of the first strut from the first end, i.e., not substantially adjacent the first end, and
- the second end of the first strut and the first end of the second strut lower portion are *fixed at a distance* to each other, i.e., not substantially adjacent.

The present application provides a context for the expression "substantially adjacent" and

¹ The Official Action refers to reference number 224, which is the entire scissor assembly. Reference number 228 in *Zeigler* '980 is the strut in question.

² During an interview with Examiners Bartosik and Chilcot on May 7, 2008, for which the Examiners are thanked, a similar drawing was provided but inadvertently confused the first and second ends of the first strut. The attached drawing illustrates that the differences between the claimed structure and the prior art are more substantial than previously indicated.

it is not alleged that the claims are indefinite. In paragraph [0023], components of an embodiment illustrated in FIG. 2A in a folded condition are described as being “substantially adjacent” and components of the embodiment illustrated in FIG. 2B in an expanded condition are described as being “proximate”. In paragraph [0023], proximate is defined as meaning that

the strut ends are *close but not necessarily adjacent* to one another and is meant to contrast with the situation where the strut ends are particularly remote. For example, when the split scissor assembly 21 is in the folded position, the first end 25' of the first strut 25 is at substantially the opposite end of the assembly from the first end 31' of the second strut lower portion 31 and those ends are not proximate in the sense used here. (emphasis added)

If “proximate” is defined as excluding “at opposite ends”, then the term “adjacent” which is generally understood to suggest a closer relationship than “proximate” also excludes “at opposite ends”.

Even if one were to concede that “substantially adjacent” is an inexact term, under any conventional definition, and particularly in view of its use in the present application, “substantially adjacent” certainly excludes “at the opposite end of” and *Zeigler '980* does not disclose a structure wherein, in a folded condition, the first end of the first strut and the second end of the second strut upper portion are substantially adjacent.

Additionally, paragraph [0023] describes structures as being “proximate” each other where they are illustrated as being spaced at a distance in the expanded embodiment of FIG. 2B. Specifically, the first end 25' of the first strut 25 and the first end 31' of the second strut lower portion 31 are described as being “proximate”. Paragraph [0023] distinguishes “proximate” as being greater than “adjacent”. In *Zeigler '980* the only structures that could correspond to the second end of the first strut and the first end of the second strut lower portion are not substantially adjacent, rather, they are fixed at a distance to each other corresponding to a

distance described in the present application as “proximate”. Again, even if one were to concede that “substantially adjacent” is an inexact term, a structure that is proximate is not adjacent or substantially adjacent.

In view of at least the foregoing difference between the claims of the present application and *Ziegler* ‘980, it is respectfully submitted that the claims are not anticipated by and define patentably over *Zeigler* ‘980. The secondary references do not cure the defects of *Zeigler* ‘980 with respect to at least the foregoing difference and it is submitted that the claims are not anticipated by and define patentably over *Zeigler* ‘980 in view of the secondary references, as well.

Withdrawal of the rejections of record and allowance of the present application is respectfully requested.

1217 King Street
Alexandria, VA 22314
(703) 299-0953

Respectfully submitted,

WRB-IP LLP

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By: /Harold R. Brown III/
Harold R. Brown III
Registration No. 36,341

